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## **Headline Highlights for RA's Tablet - MONDAY, February 24, 2014**

### **All schools to have water reevaluated this weekend**

**CHARLESTON DAILY MAIL** CHARLESTON, W.Va. -- Water supplies at all public schools in the nine-county area affected by the Freedom Industries chemical spill will be reevaluated this weekend. Gov. Earl Ray Tomblin ordered that 109 different facilities be examined. Teams will visit the sites and decide whether further water testing is needed, said state Department of Education spokeswoman Liza Cordiero. A much stricter standard will be applied to those schools that require further testing. Instead of 10 parts per billion, officials will make certain all samples test below 2 parts per billion for crude MCHM. "We have been testing water in all of our schools at the governor's more stringent level of 10 parts per billion, which is 100 times more rigorous than Centers for Disease Control and Prevention's recommend level of 1 part per million," Adj. Gen. James Hoyer said in a press release. "After testing thousands of lab samples, chemists can now confidently test at 2 (parts per billion)." Officials expect to have results by mid-week. Concerns have arose at several local schools in recent weeks as some students and teachers complained of smelling the telltale licorice odor associated with crude MCHM, the coal-cleaning agent that leaked into the Elk River in early January. Some have also reported symptoms of burning eyes, itchy skin, dizziness and headaches. One teacher was evaluated at a hospital. Any school that tests above the two parts per billion threshold this weekend will be re-flushed and retested. Moving forward, the Rapid Response Team established earlier this month will continue to answer and investigate calls. "Student safety continues to be our top priority," Tomblin said in a press release. "As a parent, I understand that families need the additional peace of mind that comes with this testing." Schools will continue to provide hand sanitizer and bottled water for drinking and cooking. West Virginia American Water said in a separate announcement Thursday that all samples taken from throughout the distribution system have tested below 10 parts per billion.

### **CHARLESTON GAZETTE**

Chemical spill a wakeup call, poll finds (Ken Ward, Jr.)

West Virginians view the January chemical spill on the Elk River as a "wake-up call" that the

state needs a different approach to environmental protection, according to a new public opinion poll conducted for the Sierra Club. Seventy-three percent of voters polled agreed West Virginia has paid too little attention to addressing threats to air and water, and that the Elk River spill should change that, according to the survey. Voters of all ages, education levels, incomes and political persuasions agreed, with particularly high agreement -- 82 percent -- among seniors. "This spill has been a wake-up call for the voters and they want it to be a wake-up call for the politicians," said Geoff Garin, president of Hart Research Associates, which conducted the poll. Conducted from Feb. 4 to Feb. 7, the survey questioned 504 registered voters in West Virginia. The results of the full sample have a margin of error of 4.4 percentage points. Among other things, the survey found most West Virginians polled do not believe the Freedom Industries spill is an isolated incident. Seven out of 10 voters said serious incidents like the spill would occur unless preventative action is taken. The survey found West Virginians are concerned about the effect regulations can have on jobs, with 59 percent agreeing regulations could result in companies cutting jobs. Still, 62 percent of those surveyed said they would be more likely to support a candidate who favors strong regulations and enforcement, more than twice the 30 percent who said they would support a candidate who believes that more regulations will only hurt jobs and the state's economy. Nearly 9 out of 10 residents expressed concern about the spill, including 44 percent of those polled who said they are "extremely concerned" about it. More than two-thirds of those polled said stronger regulations and better enforcement of existing regulations would have prevented the spill. Fifty-seven percent said federal and state agencies should have stronger standards to prevent future such incidents. Sixty-one percent of those polled said the coal industry and other corporate lobbyists have too much power, and 58 percent said it was time for elected officials to "stop letting coal industry lobbyists call the shots."

#### **WVU study links MTR to high-risk air quality in mining towns**

**CHARLESTON GAZETTE** CHARLESTON, W.Va. --A new study reports finding much larger levels of tiny -- but potentially dangerous -- particles of air pollution near mountaintop removal mining operations than in non-mining communities. The study by researchers working at West Virginia University is the latest in a long series of papers to raise questions about the public-health impact of large-scale surface coal mining in Appalachia. The paper was published online Wednesday in the peer-reviewed Journal of Exposure Science and Environmental Epidemiology. Researchers compared the levels of various sizes of air-pollution particles, including very small "ultra-fine particles," in two communities near mining operations to a third community, with no coal mining. They found that concentrations of the smallest particles and the potential for those particles to lodge in human lungs "were significantly greater around mining areas compared with non-mining areas," the study said. The study said the results demonstrate "elevated risks to humans" and that the greater lung dose "was correlated with elevated disease rates in the West Virginia mining areas. "Number concentrations at the mining areas were comparable to a previously documented urban area where number concentration was associated with respiratory and cardiovascular disease," the study said. In recent years, former WVU researcher Michael Hendryx -- a co-author of the new paper -- and others have published a series of peer-reviewed studies examining possible links between mountaintop removal and various illnesses. The work has linked health and coal-mining data to show, among other things, that residents living near mountaintop removal mines face a greater risk of cancer, birth defects and premature deaths. Continuing research, such as the new study published this week, is trying to examine actual pollution levels near mining sites and in mining communities, to provide more

answers about the potential impact.

**Philly's Indonesian immigrants lead way in cooking-oil recycling (Audio link)**

**WHYY NEWSWORKS PHILADELPHIA** Philadelphia is home to the nation's second largest Indonesian population. And the city is now home to a new Environmental Protection Agency cooking oil recycling pilot. What's the connection? Hani White, Chair of the Indonesian Disapora Network of Greater Philadelphia, said the idea to create an oil recycling program only started after a problem with oil. "A lot of Indonesians cook with a lot of oil and we try to figure out what to do with the oil. Usually we just throw it out with the trash." Or, White said, people pour the used oil down the drain which leads to clogged pipes. She experienced the problem first hand and was lamenting with women in the community about it. "We start talking and we like, 'Yeah, we actually need like some kind of a way that we can trash it safely.'" So White said members of the community started talking with the EPA to find out what to do with all their oil. After all, clogged pipes were expensive to fix. "And a lot of household is actually like, 'Oh my God what is going on?' They're calling the plumbing and the plumber is saying like, 'You should not do that.'" White said because most members of Philadelphia's Indonesian community are new arrivals they are still getting accustomed to some facets of life in America. "Back home in Indonesia we don't really have those kinds of problem." With the new pilot program, families will bring their used oil with them when they go to worship. The innovative solution to a greasy problem was born. Lena Kim is with the US Environmental Protection Agency. "The program is called Feed The Barrel, Fuel Philadelphia and it is one of the most interesting things I've worked on in my career at EPA." Kim said it's valuable to note that the initiative to start this program came from the community, not from the agency. "We realized that the Indonesian community is so unified, so digitally connected, it would be easy for them to spread the word about how there would be nine or ten drop off points initially." Kim said families will be encouraged to collect their used cooking oil each week. "And everytime they came to a church, synagogue, mosque or community center they would bring their used cooking oil." Kim said she's not aware of any other program like this in the city. "It's a community that seems very very focused on doing good." Most of the oil barrels are in South Philadelphia and one is planned for Chinatown. They are supplied for free by a local recycler, Eden Green Energy, a frying oil collection company. Director of Sales Sage Piszek said the process is spill-free, "We have trucks that have vaccum hoses that will suck the grease from the barrel." Piszek said there are similar programs in California but this is the only one of its kind in Philadelphia. The used cooking oil will then be turned into biofuel and compost. Hani White said she hopes this program succeeds in Philadelphia and then catches on in Indonesians communities across the country. She said in Philadelphia people are already excited to pour their used cooking oil into the drums, or "Feed the Barrel" as the program is calling the action. "The mothers say, 'Oh my God I have so much oil at my kitchen!'" White said some women tried to clean the oil by filtering out pieces of food but she explained to them that step wasn't necessary. The launch for the pilot program was held at the first official drop-off location at the International Bethel Church on South Broad Street. Faithfully filling the oil barrel. Beny Krisbianto is pastor at Nations Worship Center, another drop-off point. He said it is important for his community to understand "how to save the environment, like to be a good part of the community. That's my encouragement to to my congregation to our people." Krisbianto said he reminds his parishioners to bring their oil with them. "On Sundays sometimes we have 200 people and I encourage them all, 'Hey guys don't throw your oil in the trash. Don't throw your oil to the sink. Bring the left oil that you just used

for cooking and bring it to the church and we can do recycling with it." EPA said all Philadelphians are welcome to bring their cooking oil to the locations at the appropriate times.

#### **Gov. McAuliffe picks DEQ's Baxter for Natural Resources position**

**CHESAPEAKE BAY JOURNAL** Virginia Governor Terry McAuliffe has tapped Russ Baxter, Chesapeake Bay Coordinator for the Virginia Department of Environmental Quality, to serve as his Deputy Secretary of Natural Resources for the Chesapeake Bay. Baxter served as acting director and chief deputy director of the Department of Conservation and Recreation before moving to the state's DEQ. This is Baxter's second time to be nominated to a position by a Virginia governor. Gov. Mark Warner appointed him to serve as Assistant Secretary of Natural Resources under Secretary W. Tayloe Murphy, Jr., from 2002 to 2005. Baxter also has served in positions at the Chesapeake Bay Commission, the Virginia Conservation Network and the Chesapeake Bay Foundation. The Bay Foundation's Virginia Executive Director, Ann Jennings, issued a statement in praise of Baxter's appointment on Wednesday. "CBF is very pleased that Gov. McAuliffe has named such a seasoned veteran of Chesapeake Bay issues to this important post. Russ Baxter brings years of state government experience and expertise in natural resources policy, both at the executive and legislative levels," Jennings said. Jennings added that this appointment provides her foundation optimism that Virginia will reach important clean water milestones that are approaching in 2017.

#### **Governors Want States, Not Feds, to Take Lead on Drilling Regulations**

**BNA DAILY ENVIRONMENT REPORT** A dozen U.S. governors are pushing for states, not the federal government, to lead on regulation of oil and gas drilling. They argue they know their territories best, even as environmentalists question whether they are doing enough or simply doing the industry's bidding. With federal rules on hydraulic fracturing pending, the bipartisan group created the States First initiative to promote states as the "primary and appropriate regulators." They've started a website to publicize their efforts and programs to share expertise such as a regulatory exchange and certification for inspectors. "We have made great progress, and we urge the federal government to leave regulation in the capable hands of the states," the governors said in a Dec. 11 letter to American energy policy leaders. "Our programs are working." The move that unites Colorado Democrat John Hickenlooper and Texas Republican Rick Perry comes as environmentalists said states have been lax on issues such as potential groundwater contamination and whether by-products of the technique, also called fracking, trigger earthquakes. It's just the latest fight about states' rights and the role of the federal government in monitoring industries such as oil and gas, insurance and firearms. While the federal government has enacted protections for air and water, states already play a significant role in enforcing those rules and regulating drilling, said Amy Mall, a senior policy analyst at the Natural Resources Defense Council in Washington. Initiatives such as States First can undermine public confidence, Mall said. "When a governor says it's safe and they have everything under control, it sounds like industry is writing their talking points," Mall said in a telephone interview. Governors joining States First are from Alabama, Alaska, Colorado, Kentucky, Mississippi, Montana, Nevada, North Dakota, Oklahoma, Pennsylvania, Texas and Utah. It's a partnership between the Interstate Oil & Gas Compact Commission and the Ground Water Protection Council, organizations that represent energy-producing states and their regulators, according to the States First website. Costs are paid by the commission, which is funded by fees from member states based on oil and gas production, said Carol Booth, a spokeswoman in

Oklahoma City. The initiative plans no formal lobbying, she said. States First was formed in part to ward off “onerous” regulations for fracking on federal lands that the U.S. Bureau of Land Management is considering, as well as about possible rules from an Environmental Protection Agency study on drinking water, Booth said by phone. The industry, which includes producers such as Exxon Mobil Corp., Chesapeake Energy Corp., and Chevron Corp. generally supports the initiative's aims, according to Karen Moreau, a spokeswoman for the Washington-based American Petroleum Institute trade group. The group doesn't have a formal position, she said. “State-level oversight of oil and gas development is the most appropriate and effective approach to protecting human health and the environment while accounting for local geology, hydrology and other local factors,” Alan Jeffers, a spokesman for Exxon, the largest U.S. oil company, said in an e-mail. ‘Overreaching Arm’ of U.S. Perry, governor since 2000, joined the initiative because it allows the Lone Star State to avoid “the overreaching arms of the federal government,” said Cynthia Meyer, a spokeswoman. Even so, more than 800 people attended a Jan. 2 town hall meeting in Azle, which is 60 miles (97 kilometers) west of Dallas, to complain that the state is not doing enough in response to dozens of earthquakes in recent months. Federal scientists have linked the temblors in states including Texas, Arkansas and Ohio to wells used to inject wastewater from fracking, a technique in which water, chemicals and sand are shot underground to free oil or gas from rock. U.S. oil production has been at the highest level in more than two decades as technological advances let drillers coax crude from shale rock formations. But the area around Azle has had more than 30 earthquakes since November, and residents have reported loud noises, sinkholes and small cracks in walls, said Lynda Stokes, mayor of Reno, Texas, five miles north of Azle. Texas responded by ordering additional study of the issue, said state Rep. Lon Burnam, a Fort Worth Democrat who has studied fracking issues for a decade. “The state has been totally negligent,” Burnam said by phone. “Because of our regulatory environment, they have to have 100 percent proof that it is a problem before taking action.” Sound Science, Facts David Porter, a member of the Texas Railroad Commission, which oversees drilling, issued a statement Jan. 3 to reporters saying the agency must base its regulation on “sound science and proven facts, not speculation and theories.” Hickenlooper, a former oil-company geologist and one of three Democrats to join the initiative, said states are “the laboratory of innovation.” He said he has met with both environmental groups and industry executives about proposed state rules. “Rather than just try to regulate over their objections, we sat down with them,” Hickenlooper said in an interview. “Our shared value is we want clean air and clean water, and we want to get there as inexpensively as possible.” Still, five Colorado communities have approved ballot measures since 2012 banning fracking or imposing moratoriums, said Sam Schabacker, an organizer for Food and Water Watch in Denver. “People on the ground feel like the governor of Colorado is failing in regulating this industry and protecting their health and safety and quality of life,” Schabacker said by phone.

### **Hundreds rally to oppose Cove Point project**

**BALTIMORE SUN** An estimated 500 people rallied Thursday in Baltimore against plans to export liquefied natural gas from a Southern Maryland facility, chanting and carrying signs past the office tower where state regulators were considering one aspect of that proposal. The authority to approve or reject the project lies with the Federal Energy Regulatory Commission. But Maryland's Public Service Commission has the say over a 130-megawatt power plant that energy company Dominion says it needs for the export operation. The proposal has drawn powerful support — including from Rep. Steny Hoyer, a Southern Maryland Democrat — as

well as opposition from the Sierra Club and other groups, largely on environmental grounds. Both sides used this week's hearings as an opportunity to get their message out. Dominion, which owns the Cove Point complex, held a news conference Wednesday with supporters, including a construction union official and a Maryland manufacturer. They characterized the project as an economic boon and said exporting natural gas to replace coal would help the environment. The rally against the project drew people from across the state — many opposed to a controversial technique known as "fracking" used to extract natural gas — and temporarily closed streets in downtown Baltimore at lunchtime. Speakers included Del. Heather Mizeur, a Democrat who is running for governor. "I've been doing this for 12 years," said Mike Tidwell, executive director of Chesapeake Climate Action Network, which helped organize Thursday's event and estimated the crowd at about 700. "I've never been at an environmental rally ... this big." A police spokesman could not provide a crowd estimate Thursday. Dominion spokesman Chet Wade said it counted fewer than 300 people. Opponents contend that exporting natural gas from Cove Point would increase demand for hydraulic fracturing, a method of extracting the gas that environmentalists say pollutes groundwater and air but that the industry says is safe. Dominion officials said the project should not be seen as a "proxy" for fracking, including whether to allow the method in Maryland. Cove Point exports could come from as far afield as the Gulf Coast through the country's network of pipelines, said Pamela F. Faggert, the company's chief environmental officer. "Nor would stopping the Cove Point project likely reduce fracking elsewhere," Faggert said. "Cove Point exports would account for only a small sliver of the gas that could be produced in the United States. Without Cove Point, the only question is where the natural gas would go instead." That argument didn't fly with rally participants. Paul Roberts, who runs a winery in Western Maryland and sits on the state commission studying fracking, said he's concerned the state will be under far more pressure to allow the technique if natural gas interests can export from Cove Point. "It would be very terrible if all the work we've put in is undermined," Roberts said. Cove Point is an import facility for liquefied natural gas. The market for bringing that product into the country has dwindled as fracking fueled a natural gas boom in the U.S. Expanding Dominion's Calvert County complex to allow exporting would cost as much as \$3.8 billion. The company would pay an additional \$40 million in annual property taxes for five years, then receive a tax break of 42 percent for nine years. Drew Greenblatt, president of Marlin Steel Wire Products, a Baltimore manufacturer, is among those who spoke in favor of Cove Point at Dominion's news conference. "A thriving natural gas industry, one with access to all potential markets, including overseas markets ... will mean more demand for our products in America," he said. "We should take advantage of it, and we're very lucky that this has happened to our state." Hearings in the Public Service Commission case began Thursday. A hearing for public comment is scheduled for March 1 at Patuxent High School in Lusby, near Cove Point. The agency must make a decision on the power plant by May 30. The FERC has not set a timeline for a decision, Dominion said. The early hours of Thursday's hearing revolved around the project's impact. Sierra Club attorney Joshua Berman, highlighting reports suggesting that exporting would cause domestic natural gas prices to rise and promote the use of coal, asked a Dominion executive whether he agreed with those conclusions. Michael D. Frederick, vice president of LNG operations at Cove Point, said the U.S. Department of Energy — which gave Cove Point its OK to export — is charged with ensuring that the move is in the country's interests.

#### **Duke Energy says leak at second pipe halted**

**DANVILLE REGISTER AND BEE** EDEN, N.C. — Duke Energy's problems at Dan River Steam Station in Eden, N.C. — where millions of gallons of water from a coal ash basin and up to 39,000 tons of coal ash were released into the Dan River Feb. 2 — continue with weather delays from a winter storm slowing sealing of a 48-inch corrugated metal storm water drainage pipe and a second storm water pipe springing leaks. Duke Energy has now been ordered to seal off the second storm water pipe — a 36-inch concrete pipe — that the utility sent a robot through last week to check for leaks. Duke Energy initially said the second pipe did not need immediate action, but when a state inspector reviewed the tape, multiple leaks were found. The inspector called some of the leaks "gushers," and the state Division of Water Resources ordered Duke Energy to fix the pipe immediately. On Tuesday, officials said unsafe levels of arsenic were being spilled into the Dan River from the second pipe. At the plant on Wednesday, Duke Energy spokesperson Jeff Brooks pointed out pumps and tanker trucks being used to capture the water coming from the second pipe. "Nothing is going into the river," Brooks said, adding that Duke Energy plans to follow the same plan they are using with the first pipe: fill the pipe with a concrete/grout mix and cap the end at the river. Judge Brett Kavanaugh, a Republican appointee who has previously criticized EPA air rules, said bluntly at one point that industry is facing an "uphill climb" because EPA's Clean Air Scientific Advisory Committee, or CASAC, unanimously recommended the level EPA promulgated. Kavanaugh said that he was "having trouble seeing how EPA could be deemed to have acted unlawfully" and that he was "not seeing how we can second-guess this," since EPA waded through thousands of studies and used its discretion in setting the standard. Judge David Tatel, a Democratic appointee, appeared to agree. He noted that previous D.C. Circuit cases have held that it is appropriate for the agency to consider all studies early in the rulemaking process, then winnow down that number later. "We have cases saying that's an appropriate way for the agencies to proceed," he said. Eric Hostetler of the Department of Justice, representing EPA, sought to build upon the judges' questioning. He said the standard "easily meets the applicable deferential standard of review." Environmentalists have applauded the new standard, pointing out that the previous limits were set in 1997 and were widely regarded as insufficient to protect public health. Industry groups, however, criticized them and quickly filed the current lawsuit. In addition to their argument regarding the scientific studies, they challenged EPA's decision to change the monitoring system for determining whether areas are in attainment of the new standard, as well as eliminate the ability of states to average results for more than one monitor. The rule called for near-road monitoring, which industry claims will reflect exaggerated results from traffic that isn't representative of the area as a whole. Tatel and Kavanaugh were joined on the panel by Judge Janice Rogers Brown, another Republican appointee. In a good sign for EPA, they asked very few questions of Hostetler. Kavanaugh did question Hostetler about the near-road monitoring, though. He responded that the requirement was aimed at making sure EPA has data that are representative of where people live. In urban areas, he said, vulnerable populations -- such as low-income households -- frequently live near roadways and are exposed to high levels of particulate matter due to tailpipe emissions. It was "eminently reasonable for EPA to fill a gap" in its monitoring, Hostetler said.

**AIR POLLUTION: Federal judges skeptical of industry challenge to EPA soot standard**  
**GREENWIRE** Federal appellate judges were skeptical today of a broad industry challenge to U.S. EPA's new air standard for fine particles, or soot. The National Association of Manufacturers, U.S. Chamber of Commerce and other industry groups are seeking to vacate EPA's decision a little more than a year ago to tighten the National Ambient Air Quality

Standard for fine particles from 15 micrograms per cubic meter over a year to 12 micrograms. EPA justified making the standard more stringent by pointing to a series of scientific studies that have linked exposure to the particles, which come from tailpipes, power plants, drilling operations and boilers, to a variety of cardiovascular ailments (*Greenwire*, Dec. 14, 2012). But industry groups claimed they submitted their own studies that suggested retaining the 15-microgram standard was sufficient. William Wehrum of Hunton and Williams LLP, representing industry, told the U.S. Court of Appeals for the District of Columbia Circuit that EPA "put its thumb on the scale" in deciding which studies to give greater weight to. "We submitted data, and there is no indication the agency responded," Wehrum said. But at least two members of the three-judge panel suggested the agency deserves deference in setting the standard. Judge Brett Kavanaugh, a Republican appointee who has previously criticized EPA air rules, said bluntly at one point that industry is facing an "uphill climb" because EPA's Clean Air Scientific Advisory Committee, or CASAC, unanimously recommended the level EPA promulgated. Kavanaugh said that he was "having trouble seeing how EPA could be deemed to have acted unlawfully" and that he was "not seeing how we can second-guess this," since EPA waded through thousands of studies and used its discretion in setting the standard. Judge Brett Kavanaugh, a Republican appointee who has previously criticized EPA air rules, said bluntly at one point that industry is facing an "uphill climb" because EPA's Clean Air Scientific Advisory Committee, or CASAC, unanimously recommended the level EPA promulgated. Kavanaugh said that he was "having trouble seeing how EPA could be deemed to have acted unlawfully" and that he was "not seeing how we can second-guess this," since EPA waded through thousands of studies and used its discretion in setting the standard. Judge David Tatel, a Democratic appointee, appeared to agree. He noted that previous D.C. Circuit cases have held that it is appropriate for the agency to consider all studies early in the rulemaking process, then winnow down that number later. "We have cases saying that's an appropriate way for the agencies to proceed," he said. Eric Hostetler of the Department of Justice, representing EPA, sought to build upon the judges' questioning. He said the standard "easily meets the applicable deferential standard of review." Environmentalists have applauded the new standard, pointing out that the previous limits were set in 1997 and were widely regarded as insufficient to protect public health. Industry groups, however, criticized them and quickly filed the current lawsuit. In addition to their argument regarding the scientific studies, they challenged EPA's decision to change the monitoring system for determining whether areas are in attainment of the new standard, as well as eliminate the ability of states to average results for more than one monitor. The rule called for near-road monitoring, which industry claims will reflect exaggerated results from traffic that isn't representative of the area as a whole. Tatel and Kavanaugh were joined on the panel by Judge Janice Rogers Brown, another Republican appointee. In a good sign for EPA, they asked very few questions of Hostetler. Kavanaugh did question Hostetler about the near-road monitoring, though. He responded that the requirement was aimed at making sure EPA has data that are representative of where people live. In urban areas, he said, vulnerable populations -- such as low-income households -- frequently live near roadways and are exposed to high levels of particulate matter due to tailpipe emissions. It was "eminently reasonable for EPA to fill a gap" in its monitoring, Hostetler said.

### **CHARLESTON DAILY MAIL**

High court climate case looks at EPA's power

Industry groups and Republican-led states are heading an attack at the Supreme Court against the



Obama administration's sole means of trying to limit power-plant and factory emissions of gases blamed for global warming. As President Barack Obama pledges to act on environmental and other matters when Congress doesn't, or won't, opponents of regulating carbon dioxide and other heat-trapping gases cast the rule as a power grab of historic proportions. The court is hearing arguments Monday about a small but important piece of the Environmental Protection Agency's plans to cut the emissions - a requirement that companies expanding industrial facilities or building new ones that would increase overall pollution must also evaluate ways to reduce the carbon they release. Environmental groups and even some of their opponents say that whatever the court decides, EPA still will be able to move forward with broader plans to set emission standards for greenhouse gases for new and existing power plants. But a court ruling against the EPA almost undoubtedly would be used to challenge every step of the agency's effort to deal with climate change, said Jacob Hollinger, a partner with the McDermott Will and Emery law firm in New York and a former EPA lawyer. Republicans have objected strenuously to the administration's decision to push ahead with the regulations after Congress failed to pass climate legislation. In 2012, a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit concluded that the EPA was "unambiguously correct" in using existing federal law to address global warming. Monday's case, for which the court has expanded argument time to 90 minutes from the usual 60, stems from the high court's 2007 ruling in *Massachusetts v. EPA*, which said the agency has the authority under the Clean Air Act to limit emissions of greenhouse gases from vehicles. Two years later, with Obama in office, the EPA concluded that the release of carbon dioxide and other heat-trapping gases endangered human health and welfare. The administration used that finding to extend its regulatory reach beyond automobiles and develop national standards for large stationary sources.

### **GREENWIRE**

#### INFRASTRUCTURE: 5 inspectors oversee railroad bridge safety across entire nation

The Federal Railroad Administration has five inspectors to look after the nation's 76,000 railroad bridges. A single inspector alone is responsible for overseeing the safety of bridges in Oregon, Washington, Montana, Idaho, North Dakota, South Dakota, Wyoming -- and Alaska. "One inspector? Eight states?" said Sen. Ron Wyden (D-Ore.). "That is not a prescription for the movie ending well." The FRA requires rail companies to inspect privately owned bridges, but the industry doesn't have to file its findings with the federal government. Railroad companies said they comply with safety regulations despite the shortage of FRA inspectors. "We've gone well beyond the regulatory mandates," said Jerry Vest, a vice president with Genesee & Wyoming.

#### NUCLEAR: Industry taps Greenpeace co-founder as face of new campaign

The Nuclear Energy Institute has enlisted Patrick Moore, a founding member and former director of Greenpeace International, to be the new face of its clean air ads in this year's \$2 million campaign. Moore, one of the world's most vocal environmentalists in favor of nuclear power dubbed "eco-Judas" by some in the green community, will join a team aimed at pushing pro-nuclear messages pertaining to energy diversity, the reduction of carbon emissions, job creation and the future of the nuclear industry. NEI also has enlisted Leslie Dewan, chief scientist at Transatomic Power Corp., to speak on the future of nuclear power. Dewan is a graduate of the

Massachusetts Institute of Technology and a nuclear engineer. Mark Verbeck, a reactor training manager for Southern Co., will promote the industry's creation of jobs. Verbeck's involvement is notable following the Energy Department's finalization this week of a historic loan guarantee to support Georgia Power Co.'s construction of two \$14 billion reactors at Plant Vogtle (*E&ENews PM*, Feb. 19). Georgia Power is a subsidiary of Southern. The nuclear industry has worked to promote itself as a source of clean, carbon-free power, a message that has pitted some environmental groups against one another. Most recently, more than 300 environmental and anti-nuclear groups rejected calls from top climate scientists, including former NASA scientist and activist James Hansen, to embrace nuclear power to fight climate change since renewable energy sources cannot be deployed fast enough (*Greenwire*, Jan. 8). Moore's career reflects a transition the nuclear industry can embrace. He spent the first part of his environmental career working against nuclear power, writing in a 1976 Greenpeace report that nuclear power plants, aside from nuclear warheads, were "the most dangerous devices man has ever created" and that building plants was not just irresponsible but "criminal" (*Greenwire*, Feb. 12, 2007). But he left Greenpeace in 1986 and switched from campaigning against nuclear power to advocating for the energy source, based on a genuine belief that it is a clean alternative to fossil-fuel-based energy. Moore went on to lead Clean and Safe Energy (CASEnergy) with Christine Todd Whitman, the former Republican governor of New Jersey and EPA administrator under President George W. Bush. Moore stepped down from that role a year ago, according to NEI. Ron Kirk, former U.S. trade representative and mayor of Dallas, became CASEnergy's co-chairman last month.

## **NEW YORK TIMES**

### Let the E.P.A. Do Its Job

On Monday, for the third time in seven years, the Supreme Court will consider the scope of the federal government's power to regulate the emission of greenhouse gases, which are a major contributor to global climate change. In two earlier cases, the court held that under the Clean Air Act, the Environmental Protection Agency could regulate such emissions, from both motor vehicles and stationary sources like power plants. Of course, the Clean Air Act was passed in 1970, well before scientists understood the threat of climate change, and so didn't take greenhouse gases into account. But if the law is to remain effective, the court rightly reasoned in 2007, the E.P.A. must have the authority and "regulatory flexibility" to respond to "changing circumstances and scientific developments." This flexibility is what the agency exercised in 2011 when it issued tailpipe-emission standards for new cars as a way of reducing greenhouse gas emissions. By imposing those new standards on vehicles, or "mobile sources," the agency said, it then had to regulate greenhouse gas emissions from major stationary sources, too. Under the law, a major source is one that annually emits 100 or 250 tons of conventional air pollutants, like lead. But carbon dioxide, the most common greenhouse gas, is emitted in much larger amounts, which would force the regulation of tens of thousands, and possibly millions, of sources, from hospitals to small local businesses, at an estimated cost of \$21 billion per year. The E.P.A. determined that the Clean Air Act never intended such an outcome, so it set a temporary threshold of 100,000 tons to capture just the biggest emitters of greenhouse gases. In 2012, the United States Court of Appeals for the District of Columbia Circuit upheld that decision, reasoning that the Supreme Court had previously ruled that the E.P.A. could regulate greenhouse gases as a harmful air pollutant. And under the plain language of the law, the court said, the agency must require permits for the emission of "any air pollutant" that harms public health or

welfare. Yet industry representatives continued to argue that the E.P.A. had overstepped its bounds. The Supreme Court agreed to decide only one issue: whether the new vehicle emissions standards did, in fact, “trigger” the regulation of power plants, industrial operations and other stationary sources of emissions. The complex layers of regulatory interpretation should not obscure the larger issue at stake. As with most battles over environmental regulation, the struggle is between the bottom-line economic concerns of business and the government’s reasonable efforts to protect human health and the environment. Virtually everyone accepts the overwhelming evidence of human influence on climate change and the urgent need to address it, except for a handful of hardened skeptics and those who benefit financially from less regulation. The question is who gets to decide the best way to go about reducing harmful emissions. The optimal solution would be for Congress to update the Clean Air Act, but that isn’t going to happen anytime soon. In the meantime, the E.P.A. is well within its authority to interpret the law as broadly as it has. It was written that way four decades ago, and the Supreme Court has repeatedly and properly construed the agency’s powers broadly. This time is no different.

#### To Make Shipping Oil Safer, Railroads Agree to 8 Measures

Responding to concerns about the safety of trains carrying oil around the country, federal regulators on Friday outlined steps to reduce the risk of rail shipments and bolster confidence in the fast-growing industry. The Department of Transportation said the major railroads had agreed to eight voluntary measures one month after the secretary of transportation, Anthony R. Foxx, met with railroad executives in response to a series of derailments and explosions involving trains carrying crude oil. The measures, which did not involve public comments, include lowering speed limits for oil trains in some cities, increasing the frequency of track inspections, adding more brakes on trains and improving the training of emergency medical workers. The Department of Transportation said these steps would be taken quickly and that it was still considering other longer-term measures. Still, the announcement fell short of what many analysts and independent rail experts have said is needed to ensure the safe movement of oil trains; they have called on the government to quickly retire or ban the use of older tank cars, known as DOT-111s, that have long been known to rupture in a crash. Also, the new measures do not modify current regulations that railroads must follow to determine whether trains carrying hazardous materials need to be rerouted from heavily populated areas or environmentally sensitive zones. Those rules set out 27 criteria the industry can weigh to make this determination. While the criteria are public, the industry does not make its routes public. Fred Millar, an independent rail consultant, said the measures underscored the fact that rail operators remained secretive about operations involving hazardous materials despite the recent accidents. He also blamed regulators for failing to take stronger enforcement measures. “There is a telling lack of any new reporting and accountability measures, and federal resource augmentations, that could signal a new federal determination to reduce risks,” Mr. Millar said. The administration as well as the oil and rail industries are under enormous pressure to enhance rail safety after recent episodes drew widespread attention to the risks of shipping large quantities of crude oil in unpressurized railcars. The danger was highlighted in July when a runaway train in Canada destroyed Lac-Mégantic, Quebec, killing 47 people. Oil producers from the Bakken region around North Dakota, which has had a boom in production, rely on railroads to ship their output. About 10 percent of the nation’s daily oil production goes by trains, which typically have 80 to 120 tank cars, to refineries across the nation. The announcement on Friday covered steps that could be taken soon. Additional issues, like tank car standards and the proper classification of oil, are

being addressed separately, rail and transportation officials said. For example, regulators at the Pipeline and Hazardous Materials Safety Administration, which is part of the Department of Transportation, are considering new car rules, including how fast to phase out the older models. But those rules are not expected before the end of the year and could take years to be put into effect. Car owners have said there are not enough new cars in the market, and there is a backlog that will take years to fulfill. Tank cars built after 2011 have an improved design that includes stronger hulls and reinforced valves that do not puncture or leak if the train derails, but a large number of older cars remain in service. The Association of American Railroads has said the government should require older cars to be retired and replaced with the new design. Several rail and oil companies did not wait for these new standards to become mandatory. On Thursday, BNSF Railway said it planned to move into tank car ownership and buy up to 5,000 new cars. A BNSF train was involved in a derailment in North Dakota last December. This week, Irving Oil, the owner of the Canadian refinery whose oil shipment incinerated much of Lac-Mégantic, said that it would scrap its older cars by the end of April. Irving said it would also require shippers to use cars that meet the 2011 safety standards by the end of this year. And Canada's two largest railways, Canadian National and Canadian Pacific, are introducing extra charges to discourage the use of older cars. A tariff filing posted by Canadian Pacific shows that the railway will charge an extra \$325 after March 15 for every car that does not meet current safety standards. Based on a number of factors, that will increase typical shipment costs by about 5 percent. Speaking this week to the Chamber of Commerce in Calgary, Alberta, where Canadian Pacific is based, E. Hunter Harrison, the rail line's chief executive, urged shippers and rail lines to swiftly remove older cars. "Most generally nobody quibbles with that they're more dangerous; that they're not equipped to haul this commodity," Mr. Harrison said. "So what should we do with them? Stop them tomorrow. Don't wait to study. We know the facts." Mr. Harrison added: "You know what it comes down to, and I hate to tell you this, the almighty dollar. Who's going to pay for this?"